



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB067]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Offshore of Massachusetts, Rhode Island, Connecticut, and New York

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from Vineyard Wind, LLC (Vineyard Wind) for the Renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to marine site characterization survey activities off the coast of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS-A 0501 and OCS-A 0522) and along potential submarine cable routes to landfall locations in Massachusetts, Rhode Island, Connecticut, and New York. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The Renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed Renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.tyson.moore@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Reny Tyson Moore, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>*. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16

U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA

issuance notice is planned or (2) the activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a Renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

(1) A request for Renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

(2) The request for Renewal must include the following:

- An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

(3) Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at:

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-

authorization-renewals. Any comments received on the potential Renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA Renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested Renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA Renewal qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA Renewal request.

History of Request

On May 06, 2020, NMFS issued an IHA to Vineyard Wind to take marine mammals incidental to marine site characterization survey activities off the coast of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS-A 0501 and OCS-A 0522) and along potential submarine cable routes to landfall locations in Massachusetts, Rhode

Island, Connecticut, and New York (85 FR 26940), effective from June 01, 2020 through May 31, 2021. This IHA was re-issued on July 14, 2020 with the only change being a change in effective dates from June 21, 2020 through June 20, 2021 (85 FR 42357). On March 25, 2021, NMFS received a request for a Renewal of the re-issued IHA. As described in the request for Renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

Vineyard Wind plans to conduct high-resolution geophysical (HRG) surveys in support of offshore wind development projects in the areas of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (#OCS-A 0501 and #OCS-A 0522) (Lease Areas) and along potential submarine cable routes to landfall locations in Massachusetts, Rhode Island, Connecticut, and New York. The purpose of the marine site characterization surveys is to obtain a baseline assessment of seabed/sub-surface soil conditions in the Lease Area and cable route corridors to support the siting of potential future offshore wind projects. Underwater sound resulting from Vineyard Wind's planned site characterization surveys has the potential to result in incidental take of 14 marine mammal species in the form of Level B behavioral harassment. Vineyard Wind requested a Renewal of the initial IHA that was re-issued by NMFS in July 2020 on the basis that the activities as described in the Specified Activities section of the initial IHA would not be completed by the time the IHA expires and a

Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of the initial IHA.

In their 2020 IHA application, Vineyard Wind estimated that it would take a year to complete the HRG surveys. This schedule was based on 24-hour operations and included potential down time due to inclement weather. With up to eight survey vessels operating concurrently, a maximum of 736 vessel days were anticipated. Each vessel would maintain a speed of approximately 3.5 knots (kn; 6.5 kilometers [km]/hour) while transiting survey lines and each vessel would cover approximately 100 km per day. However, during the 2020-2021 survey season, Vineyard Wind completed only 184 vessel days of the 736 vessel days estimated to complete the work and only surveyed approximately 25 percent of the planned survey routes. Vineyard Wind predicts that a maximum of 552 vessel days, with up to eight survey vessels operating concurrently, over 181 days will be required to survey the remaining routes, estimated to be approximately 55,200 km. The Renewal IHA would authorize harassment of marine mammals for this remaining survey distance using survey methods identical to those described in the initial IHA application; therefore, the anticipated effects on marine mammals and the affected stocks also remain the same. All active acoustic sources and mitigation and monitoring measures would remain as described in the **Federal Register** notices of the proposed IHA (85 FR 7952, February 12, 2020) and issued IHA (85 FR 26940, May 06, 2020). The amount of take requested for the Renewal IHA reflects the amount of remaining work in consideration of marine mammal monitoring data from the 2020 survey season resulting in equal or less take than that authorized in the initial IHA.

Detailed Description of the Activity

A detailed description of the HRG activities for which take is proposed here may be found in the **Federal Register** notices of the proposed IHA (85 FR 7952, February 12, 2020), issued IHA (85 FR 26940, May 06, 2020), and reissued IHA (85 FR 42357, July

14, 2020) for the initial authorization. As described above, Vineyard Wind is not able to complete the survey activities analyzed in the initial IHA by the date the IHA is set to expire (June 20, 2021). As such, the surveys Vineyard Wind proposes to conduct under this Renewal would be a continuation of the surveys as described in the initial IHA. The location and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. Because part of the work has already been completed, the duration of the surveys conducted under the Renewal IHA will occur over less time than that described for the initial IHA (181 days versus 365 days); however, Vineyard Wind will continue to operate 24 hours per day to complete the work. Vineyard Wind proposes to continue its activities on June 21, 2021, after the initial IHA expires on June 20, 2021. The proposed Renewal would be effective for a period of one year from the date of issuance.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notices of the proposed and final IHAs for the initial authorization (85 FR 7952, February 12, 2020; 85 FR 26940, May 06, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

The draft 2020 Stock Assessment Report (SAR, available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports>) states that estimated abundance has increased for the

Western North Atlantic stock of common dolphins, from 172,825 (CV = 0.21) to 172,974 (CV = 0.21), and decreased for the following marine mammal stocks: the Gulf of Maine stock of humpback whales (from 1,396 (CV = 0) to 1,393 (CV = 0.15)), the Western North Atlantic stock of fin whales (from 7,418 (CV = 0.25) to 6,802 (CV = 0.24)), and the Canadian East coast stock of minke whales (from 24,202 (CV = 0.3) to 21,968 (CV=0.31)). Abundance estimates for the Western North Atlantic stock of North Atlantic right whales have also been updated, and state that right whale abundance has decreased from 428 to 368 (95% CI 356-378) individuals (Pace 2021).

Roberts *et al.* (2020) provided updated monthly densities of North Atlantic right whales in the area of proposed activities since the time of the initial IHA. These updated data for North Atlantic right whale densities incorporate additional sighting data and include increased spatial resolution. We reviewed the updated model documentation and recalculated the North Atlantic right whale density estimates following the same methods outlined in the proposed and final IHAs for the initial authorization (85 FR 7952, February 12, 2020; 85 FR 26940, May 06, 2020). The new model results state that the mean annual North Atlantic right whale densities have slightly increased in the activity area.

NMFS has preliminarily determined that neither the updated abundance and density information presented above nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the initial authorization (85 FR 7952, February

12, 2020; 85 FR 26940, May 06, 2020). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, Technical Reports (*e.g.*, Pace 2021), information on relevant Unusual Mortality Events, and other scientific literature and data (*e.g.*, Roberts *et al.* 2020) and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the proposed and final IHAs for the initial authorization (85 FR 7952, February 12, 2020; 85 FR 26940, May 06, 2020). The acoustic source types, as well as source levels applicable to this authorization remain unchanged from the initial IHA. Similarly, the stocks taken, methods of take, and type of take (*i.e.*, Level B harassment only) remain unchanged from the initial IHA.

In the initial authorization for the HRG survey activities, the potential for take was estimated using the following parameters: (1) maximum number of survey days that could occur over a 12-month period; (2) maximum distance each vessel could travel per 24-hour period in each of the identified survey areas; (3) maximum ensonified area (zone of influence (ZOI)); and (4) maximum marine mammal densities for any given season that a survey could occur. The calculated radial distances to the Level B harassment threshold (160 decibel (dB) root mean square (rms)) from a survey vessel are included in Table 1.

Table 1. Modeled Radial Distances from HRG Survey Equipment to Isopleths Corresponding to Level A Harassment and Level B Harassment Thresholds

HRG Survey Equipment		Level B Harassment Horizontal Impact Distance (m)
Shallow subbottom profilers	EdgeTech Chirp 216	4
Deep seismic profilers	Applied Acoustics AA251 Boomer	178
Deep seismic profilers	GeoMarine Geo Spark 2000 (400 tip)	195

The equation for estimating take for all species remains the same as the initial IHA:

$$\text{Estimated Take} = D \times \text{ZOI} \times \# \text{ of days}$$

Where: D = species density (per km²) and ZOI = maximum daily ensonified area

In the notices of the proposed and final IHAs for the initial authorization (85 FR 7952, February 12, 2020; 85 FR 26940, May 06, 2020), a conservative ZOI was calculated by applying the maximum radial distance for any category and type of HRG survey equipment considered in its assessment to the mobile source ZOI calculation. This maximum calculated distance to the Level B harassment threshold for the GeoMarine Geo Spark 2000 of 195 m was also used to calculate the ZOI for the requested extension. Vineyard Wind estimates that proposed survey vessels will achieve a maximum daily track line distance of 100 km per day during proposed HRG surveys. This distance accounts for the vessel traveling at roughly 3.5 kn (6.5 km/hour) and accounts for non-active survey periods. Based on the maximum estimated distance to the Level B harassment threshold of 195 m (Table 1) and the maximum estimated daily track line distance of 100 km, Vineyard Wind estimated that an area of 39.12 km² would be ensonified to the Level B harassment threshold per day during Vineyard Wind's proposed HRG surveys. This is a conservative estimate as it assumes the HRG sources that result in the greatest isopleth distances to the Level B harassment threshold would be operated at all times during the all vessel days.

This methodology of calculating take in the initial IHA applies to the proposed Renewal IHA for all species, with the only difference being the fewer amount of vessel days (*i.e.*, 552 versus 736). The result is that the amount of take is reduced proportionally to the reduction in the number of days of work remaining. Vineyard Wind has requested a deviation from the proportionally reduced calculated take for Risso's dolphins as described below. Other than in the additional instances described below, NMFS agrees

with Vineyard Wind's request for take and we propose to authorize the same amount of take as described in their request.

In their request for a Renewal IHA application, Vineyard Wind requested that the number of Level B harassment takes (per the equation above) for Risso's dolphins be equal to their average group size estimate (6 individuals), given a proportional reduction in take based on the reduction in the number of days of work remaining would result in a take estimate that is smaller than the average group size estimate. As described in Vineyard Wind's preliminary monitoring report, they did not observe any Risso's dolphins during the survey work thus far completed. Therefore, we have carried over the same amount of take as proposed in the initial IHA, which is based on an average group size of 6 Risso's dolphins (Table 2).

In the notices of the proposed and final IHAs for the initial authorization (85 FR 7952, February 12, 2020; 85 FR 26940, May 06, 2020) takes by Level B harassment authorized for North Atlantic right whales were limited to 10 individuals, which was reduced from the calculated take of 31 whales. There were several reasons justifying this reduction. Vineyard Wind established and monitored a shutdown zone at least 2.5 times (500-meters (m)) greater than the predicted Level B harassment threshold distance (195 m). Take had also been conservatively calculated based on the largest source, which will not be operating at all times, and take is therefore likely over-estimated to some degree. Furthermore, the potential for incidental take during daylight hours is very low given that two Protected Species Observers (PSOs) are required for monitoring. Additionally, sightings of right whales had been uncommon during previous HRG surveys conducted in areas near the proposed surveys. For example, no North Atlantic right whales were sighted during Bay State Wind surveys in adjacent and overlapping survey areas over 376 vessel days between May 11, 2018 and March 14, 2019. Vineyard Wind also had no North Atlantic right whales sighted in their marine mammal monitoring report that

included Lease Areas OCS-A 0501 and OCS-A 0522 from May 31, 2019 through January 7, 2020. Therefore, the aforementioned factors led NMFS to conclude that the unadjusted modeled exposure estimate was likely a significant overestimate of actual potential exposure. Accordingly, in the initial IHA NMFS made a reasonable adjustment to conservatively account for these expected mitigating effects on actual taking of right whales.

During the 2020-2021 surveys, Vineyard Wind reported four sightings of seven North Atlantic right whales in their preliminary monitoring report. While all of these individuals were observed on a single day (December 20, 2020) and outside both the estimated 195-m Level B harassment Zone and the 500 m Exclusion Zone (EZ) for North Atlantic right whales (closest approaches were > 900 m), they represent an increased amount of sightings observed during HRG surveys, though the information suggests that there were no takes. Updated model outputs from Roberts *et al.* (2020) also suggest that there has been a slight increase in North Atlantic right whale density in the survey area. Despite the increase in sightings and densities of North Atlantic right whales in the survey area, we believe that an updated unadjusted modeled exposure estimate based on these slightly increased densities would still represent a significant overestimate of the actual potential exposure, and therefore propose to carry over the same amount of take (10 individuals) as proposed in the initial IHA, which accounts for the expected mitigating effects on the actual taking of right whales.

As documented in Vineyard Wind's preliminary monitoring report, there was a number of sightings of delphinids both within the estimated 195 m Level B Harassment Zone and the 100 m EZ that were characterized by the PSOs as 'voluntary approaches.' A "voluntary approach" is defined as a purposeful approach toward the vessel by the delphinid(s) with a speed and vector that indicates that the delphinid(s) is approaching the vessels and remains near the vessel or towed equipment (BOEM 2014). Vineyard Wind

PSOs reported 270 sightings of approximately 3,332 individual common dolphins within the estimated 195 m Level B harassment zone for the sparker. During these marine mammal observations, no behavior was observed that would be considered consistent with a behavioral response to harassment (*i.e.*, rapid swimming away from the sound source or vessel; repeated fin slaps or breaches; notable changes in behavior as a result of vessel approach), and no animals demonstrated signs of harm. Therefore, Vineyard Wind concluded that these animals did not experience Level B Harassment, as defined under the MMPA. Given that Vineyard Wind observed more common dolphins than expected, we propose to carry over the same amount of take (2,036 individuals) as proposed in the initial IHA, as opposed to decreasing it commensurate to the reduced amount of activity remaining. Thus, take numbers proposed in this IHA Renewal (Table 2) represent prorated estimates for all species except North Atlantic right whales, Risso's dolphins, and common dolphins whose proposed take estimates remain the same as authorized in the initial IHA.

On August 20, 2020 Vineyard Wind PSOs observed two white-beaked dolphins within the 195 m Level B harassment zone for the sparker during the first year of Vineyard Wind's survey activities. White-beaked dolphins were considered unlikely to be encountered in the survey area and, therefore, take was not considered reasonably likely to occur and was not authorized in the initial IHA. This species has historically been found in waters outside of the survey area, from southern New England to southern Greenland and Davis Straits (Leatherwood *et al.* 1976; CETAP 1982, Hayes *et al.* 2019), across the Atlantic to the Barents Sea and south to at least Portugal (Reeves *et al.* 1999). In waters off the northeastern U.S. coast, white-beaked dolphin sightings are typically concentrated in the western Gulf of Maine and around Cape Cod (CETAP 1982, Hayes *et al.* 2019). The dolphins observed during the 2020-2021 surveys were first sighted as unidentified dolphins due to the decreased visibility under sea state 3 conditions, creating

challenges in identification. Given the dolphins were of genera *Delphinus*, *Lagenorhynchus*, or *Tursiops*, and in accordance with IHA condition 4(f)(vii), the PSO used their best professional judgment in determining that the animals were exempted from the shutdown requirement. After less than a minute of bow riding the dolphins began swimming away and at the end of the sighting the PSO was able to make a positive ID. The PSO determined the animal was leaving the zone and therefore no mitigation was required. The PSO determined that there was no behavioral change or signs of distress and thus Vineyard Wind did not report the sighting as a potentially unauthorized Level B harassment take. Despite this single observation of white beaked dolphins, encounters with the species in the survey area remain unlikely. For example, no sightings of white beaked dolphins have been reported in monitoring reports from other IHAs issued in the same region in recent years. Therefore, NMFS has determined that the initial determination that take of the species is not reasonably likely to occur and, therefore, that take authorization for the species is not warranted. We have clarified with Vineyard Wind the need to communicate any sightings of rare species to NMFS as soon as possible.

Table 2. Initial IHA Take Authorized and Renewal IHA Proposed Take

Species	Level B harassment		Percent Population ¹
	Take authorized initial IHA	Proposed take Renewal IHA	
Fin whale	67	51	1.1
Humpback whale	46	34	2.1
Minke whale	41	31	1.5
North Atlantic right whale	10	10	2.7
Sei whale	4	3	0.4
Atlantic white sided dolphin	1,011	758	2.0
Bottlenose dolphin (WNA Offshore)	815	611	1.0
Long-finned pilot whales	142	107	0.6
Risso's dolphin	6	6	0.08

Common dolphin	2,036	2,036	2.3
Sperm whale	4	3	0.06
Harbor porpoise	1,045	784	1.7
Gray seal	4,044	3,033	11.17
Harbor seal	4,044	3,033	4.0

¹ Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 2 in the notice of the final IHA for the initial authorization (85 FR 26940, May 06, 2020). In most cases the best available abundance estimate is provided by Roberts *et al.* (2016, 2017, 2018), when available, to maintain consistency with density estimates derived from Roberts *et al.* (2016, 2017, 2018). For North Atlantic right whales the best available abundance estimate is derived from the 2021 NOAA Technical Memorandum NMFS-NE-269 Revisions and Further Evaluations of the Right Whale Abundance Model: Improvements for Hypothesis Testing (Pace, 2021). For bottlenose dolphins and seals, Roberts *et al.* (2016, 2017, 2018) provides only a single abundance estimate and does not provide abundance estimates at the stock or species level (respectively), so abundance estimates used to estimate percentage of stock taken for bottlenose dolphins, gray and harbor seals are derived from NMFS SARs (Hayes *et al.*, 2019).

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the FR Notice announcing the issuance of the initial IHA (85 FR 26940, May 06, 2020), and the discussion of the least practicable adverse impact included in that document and the notice of the proposed IHA remains accurate (85 FR 7952, February 12, 2020; 85 FR 26940, May 06, 2020). All mitigation, monitoring and reporting measures in the initial IHA are carried over to this proposed Renewal IHA and summarized here:

- *EZ*: Marine mammal EZs will be established around the HRG survey equipment and monitored by PSO during HRG surveys as follows: A 500-m EZ is required for North Atlantic right whales and a 100-m EZ is required for all other marine mammals (with the exception of certain genera of small delphinids (*i.e.*, *Delphinus*, *Lagenorhynchus*, and *Tursiops*) under certain circumstances, such as individuals voluntarily approaching the vessel). If a marine mammal is detected approaching or entering the EZs during the planned survey, the vessel operator would adhere to the shutdown procedures described below. In addition to the

EZs described above, PSOs would visually monitor a 200-m Buffer Zone; however, this Buffer Zone is not applicable when the EZ is greater than 100 meters. PSOs would also be required to observe a 500-m Monitoring Zone and record the presence of all marine mammals within this zone and within the Level B harassment zone. The zones described above would be based upon the radial distance from the active equipment (rather than being based on distance from the vessel itself).

- *PSO*: A minimum of two NMFS-approved PSOs must be on duty and conducting visual observations at all times on all active survey vessels when HRG equipment is operating, including both daytime and nighttime operations. Visual monitoring would begin no less than 30 minutes prior to initiation of HRG survey equipment and would continue until 30 minutes after use of the acoustic source ceases or until 30 minutes past sunset. However, Vineyard Wind has committed to 24-hr use of PSOs. PSOs would establish and monitor the applicable EZs, Buffer Zone and Monitoring Zone as described above.
- *Pre-Operation Clearance Protocols*: Prior to initiating HRG survey activities, Vineyard Wind would implement a 30-minute pre-clearance period. Ramp-up of the survey equipment would not begin until the relevant zones (500-m EZ for North Atlantic right whales and 200-m Buffer Zone for all other species) have been cleared by the PSOs. If any marine mammals are detected within the relevant EZs or Buffer Zone during the pre-clearance period, initiation of HRG survey equipment would not begin until the animal(s) has been observed exiting the respective EZ or Buffer Zone, or, until an additional time period has elapsed with no further sighting (*i.e.*, minimum 15 minutes for small

odontocetes and seals, and 30 minutes for all other species). The pre-clearance requirement would include small delphinids that approach the vessel (*e.g.*, bow ride). PSOs would also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

- *Ramp-up*: A ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. Ramp-up of the survey equipment would not begin until the relevant EZs and Buffer Zone has been cleared by the PSOs, as described above. HRG equipment would be initiated at their lowest power output and would be incrementally increased to full power. If any marine mammals are detected within the EZs or Buffer Zone prior to or during ramp-up, the HRG equipment would be shut down (as described below).
- *Shutdown of HRG Equipment*: If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above) an immediate shutdown of the HRG survey equipment would be required. Note this shutdown requirement would be waived for certain genera of small delphinids as described above. Subsequent restart of the HRG equipment would only occur after the marine mammal has either been observed exiting the relevant EZ, or, until an additional time period has elapsed with no further sighting of the animal within the relevant EZ (*i.e.*, 15 minutes for small odontocetes and seals, and 30 minutes for all other species).
- *Vessel strike avoidance measures*: Separation distances for large whales (500 m North Atlantic Right Whales, 100 m other large whales; 50 m other cetaceans and pinnipeds), restricted vessel speeds, and operational

maneuvers.

Seasonal Operating Requirements:

- Vineyard Wind will conduct HRG survey activities in the Cape Cod Bay Mid-Atlantic U.S. Seasonal Management Area (SMA) and Off Race Point SMA only during the months of August and September to ensure sufficient buffer between the SMA restrictions (January to May 15) and known seasonal occurrence of the North Atlantic right whale north and northeast of Cape Cod (fall, winter, and spring). Vineyard Wind will also limit to three the number survey vessels that will operate concurrently from March through June within the lease areas (OCS-A 0501 and 0487) and offshore export cable corridor (OECC) areas north of the lease areas up to, but not including, coastal and bay waters. Another seasonal restriction area south of Nantucket will be in effect from December to February in the area delineated by the DMA that was effective from January 31, 2020 through February 15, 2020. In addition, Vineyard Wind would operate either a single vessel, two vessels concurrently or, for short periods, no more than three survey vessels concurrently in the areas described above during the December-February and March-June timeframes when right whale densities are greatest. The seasonal restrictions described above will help to reduce both the number and intensity of North Atlantic right whale takes.
- *Reporting:* Vineyard Wind will submit a final technical report within 90 days following completion of the surveys. In the event that Vineyard Wind personnel discover an injured or dead marine mammal, Vineyard Wind shall report the incident to the Office of Protected Resources (OPR), NMFS and to the New England/Mid-Atlantic Regional Stranding

Coordinator as soon as feasible. In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, Vineyard Wind shall report the incident to OPR, NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (85 FR 7952, February 12, 2020) and solicited public comments on both our proposal to issue the initial IHA for marine site characterization surveys and on the potential for a Renewal IHA, should certain requirements be met.

All public comments were addressed in the notice announcing the issuance of the initial IHA (85 FR 26940, May 06, 2020). Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the Renewal of the 2020 IHA.

Comment: The Marine Mammal Commission (Commission) recommended that NMFS refrain from issuing Renewals for any authorization and instead use its abbreviated **Federal Register** notice process. They argued that the process is similarly expeditious and fulfills NMFS's intent to maximize efficiencies, and that NMFS (1) stipulate that a Renewal is a one-time opportunity (a) in all **Federal Register** notices requesting comments on the possibility of a Renewal, (b) on its web page detailing the Renewal process, and (c) in all draft and final authorizations that include a term and condition for a Renewal and, (2) if NMFS refuses to stipulate a Renewal being a one-time opportunity, explain why it will not do so in its **Federal Register** notices, on its web page, and in all draft and final authorizations.

Response: NMFS expressed how it does not agree with the Commission that we instead use the abbreviated notice process and did not adopt the Commission's

recommendation. As explained in the response to the following comment, NMFS believes Renewals can be issued in certain limited circumstances.

The Commission was also concerned that NMFS had not explicitly identified that a 1-year Renewal IHA was a one-time opportunity in our **Federal Register** notices nor on our website. NMFS has since identified in **Federal Register** notices and on our website that a Renewal IHA is one time opportunity.

Comment: A group of environmental non-governmental organizations (ENGOS) objected to NMFS' process to consider extending any 1-year IHA with a truncated 15-day comment period as contrary to the MMPA.

Response: NMFS' IHA Renewal process meets all statutory requirements. All IHAs issued, whether an initial IHA or a Renewal IHA, are valid for a period of not more than 1 year. And the public has at least 30 days to comment on all proposed IHAs, with a cumulative total of 45 days for IHA Renewals. As noted above, the Request for Public Comments section in the initial IHA made clear that the agency was seeking comment on both the initial proposed IHA and the potential issuance of a Renewal for this project. Because any Renewal (as explained in the Request for Public Comments section in the initial IHA) is limited to another year of identical or nearly identical activities in the same location (as described in the Description of Proposed Activity section in the initial IHA) or the same activities that were not completed within the one-year period of the initial IHA, reviewers have the information needed to effectively comment on both the immediate proposed IHA and a possible 1-year Renewal, should the IHA holder choose to request one.

While there are additional documents submitted with a Renewal request, for a qualifying Renewal these are limited to documentation that NMFS will make available and use to verify that the activities are identical to those in the initial IHA, are nearly identical such that the changes would have either no effect on impacts to marine

mammals or decrease those impacts, or are a subset of activities already analyzed and authorized but not completed under the initial IHA. NMFS will also confirm, among other things, that the activities will occur in the same location; involve the same species and stocks; provide for continuation of the same mitigation, monitoring, and reporting requirements; and that no new information has been received that would alter the prior analysis. The renewal request also contains a preliminary monitoring report, but that is to verify that effects from the activities do not indicate impacts of a scale or nature not previously analyzed. The additional 15-day public comment period provides the public an opportunity to review these few documents, provide any additional pertinent information and comment on whether they think the criteria for a renewal have been met. NMFS also will provide direct notice of the proposed Renewal to those who commented on the initial IHA, to provide an opportunity to submit any additional comments. Between the initial 30-day comment period on these same activities and the additional 15 days, the total comment period for a renewal is 45 days.

In addition to the IHA Renewal process being consistent with all requirements under section 101(a)(5)(D), it is also consistent with Congress's intent for issuance of IHAs to the extent reflected in statements in the legislative history of the MMPA. Through the provision for Renewals in the regulations, description of the process and express invitation to comment on specific potential Renewals in the Request for Public Comments section of each proposed IHA, the description of the process on NMFS' website, further elaboration on the process through responses to comments such as these, posting of substantive documents on the agency's website, and provision of 30 or 45 days for public review and comment on all proposed initial IHAs and Renewals respectively, NMFS has ensured that the public "is invited and encouraged to participate fully in the agency decision-making process."

For more information, NMFS has published a description of the Renewal process on our website (available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals>).

Preliminary Determinations

The survey activities proposed by Vineyard Wind are identical to (and a subset of) those analyzed in the initial IHA, as are the method of taking and the effects of the action. The mitigation measures and monitoring and reporting requirements as described above are also identical to the initial IHA. The planned number of days of activity will be reduced given the completion of a small portion of the originally planned work. Therefore, the amount of take proposed is equal to or less than that authorized in the initial IHA. The potential effect of Vineyard Winds' activities remains limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activities in the initial IHA, NMFS determined that Vineyard Wind's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third of the abundance of all stocks).

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundances of four stocks (North Atlantic right whales, humpback whales, fin whales, and minke whales) decreasing and the estimated abundances of one stock (common dolphins) increasing (Hayes *et al.* 2020, Pace 2021). This also includes consideration of the increased density estimates for North Atlantic right whales based on updated model outputs from Roberts *et al.* (2020) as described above in the *Estimated Take* section. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal

species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Vineyard Wind's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources is authorizing the incidental take of four species of marine mammals which are listed under the ESA: The North Atlantic right, fin, sei and sperm whale. We requested initiation of consultation under Section 7 of the ESA with NMFS GARFO on February 12, 2020, for the issuance of this IHA. BOEM consulted with NMFS GARFO under section 7 of the ESA on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. The NMFS GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of the North Atlantic right, fin, sei and sperm whale. Upon request from the NMFS Office of Protected Resources, NMFS GARFO issued an amended incidental take statement associated with this Biological Opinion to include the take of the ESA-listed marine

mammal species authorized through this IHA in April 2020. On May 12, 2021 NMFS GARO determined that their initial consultation remains valid and that the proposed MMPA Renewal IHA provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require reinitiation of the opinion.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a Renewal IHA to Vineyard Wind for conducting marine site characterization survey activities off the coast of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS-A 0501 and OCS-A 0522) and along potential submarine cable routes to landfall locations in Massachusetts, Rhode Island, Connecticut, and New York for a period of one year from the date of issuance, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. We request comment on our analyses, the proposed Renewal IHA, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: June 2, 2021.

Catherine Marzin,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.